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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ASAF TURM, AYAL GALILI, ITTAI WIENER,
ASSAF BAREL, and DUDI GUTMAN

Appeal 2016-005863
Application 14/353,841¹
Technology Center 2600

Before JEREMY J. CURCURI, HUNG H. BUI, and
DAVID J. CUTITTA II, *Administrative Patent Judges*.

BUI, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants seek our review under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–16, which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.²

¹ According to Appellants, the real party in interest is Hewlett-Packard Indigo B.V. App. Br. 1.

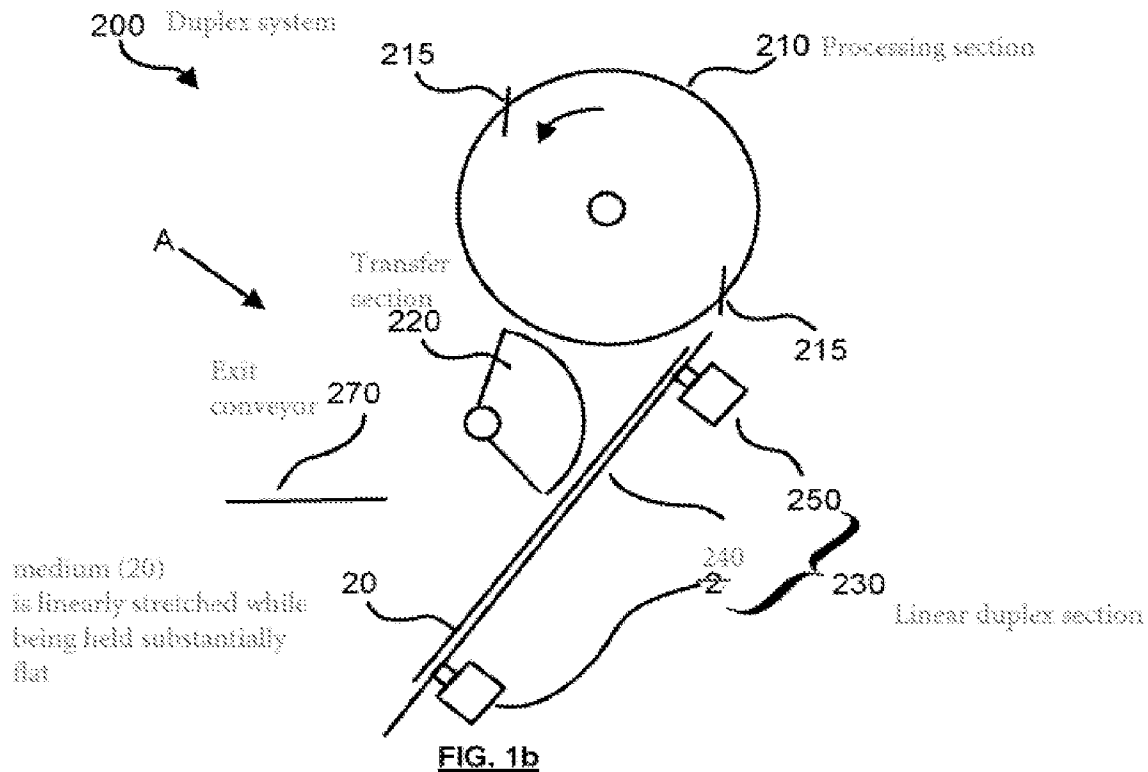
² Our Decision refers to Appellants' Appeal Brief, filed October 8, 2015 ("App. Br."); Reply Brief, filed May 13, 2016 ("Reply Br."); Examiner's Answer, mailed March 22, 2016 ("Ans."); Final Office Action, mailed May 29, 2015 ("Final Act."); and original Specification, filed April 24, 2014 ("Spec.").

STATEMENT OF THE CASE

Appellants' invention relates to a printer system having a duplex section 230, shown in Figures 1A–1B, that includes two retaining sections 240, 250 to (1) hold a sheet 20 of paper or other medium flat, (2) stretch the sheet 20 while holding it substantially flat, and (3) return the sheet 20 to an imaging unit or other “processing section” while it is being stretched.

Spec. ¶ 7; Abstract.

Appellants' Figure 1B is reproduced below with additional markings for illustration.



Appellants' Figure 1B shows a duplex section 200 including first and second retaining sections 240, 250 to perform recited functions.

Claims 1, 8, and 13 are independent. Representative claim 1 is reproduced below with disputed limitations in *italics*:

1. A duplex section comprising:
 - a first retaining section arranged to retain a first portion of a medium received from a processing section, the medium having first and second faces; and
 - a second retaining section arranged to retain a second portion of the medium,wherein the duplex section is arranged such that
 - the medium is held substantially flat by the first and second retaining sections,*
 - the medium is linearly stretched by the first and second retaining sections while being held substantially flat,* andwhile being stretched the medium is returned to the processing section with the first and second faces interchanged relative to the processing of the processing section.

App. Br. 5 (Claims Appendix).

Evidence Considered

Takai	US 2002/0144611 A1	Oct. 10, 2002
Hachmann	US 6,883,426 B2	Apr. 26, 2005
Landa	US 6,912,952 B1	July 5, 2005
Inoue	US 2008/0038004 A1	Feb. 14, 2008
Takagi	JP 2009-298528	Dec. 24, 2009

Examiner's Rejections

- (1) Claims 1–3, 5–9, 12, and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hachmann and Landa. Ans. 2–9.
- (2) Claims 4 and 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hachmann, Landa, and Inoue. Ans. 9–10.
- (3) Claim 11 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Hachmann, Landa, and Takai. Ans. 11–12.

(4) Claims 14–16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hachmann, Landa, and Takagi. Ans. 12–13.

Issue on Appeal

Based on Appellants’ arguments, the dispositive issue on appeal is whether the combination of Hachmann and Landa teaches or suggests the disputed limitation: “the medium is held substantially flat . . . [and] linearly stretched by the first and second retaining sections while being held substantially flat” as recited in claim 1, and similarly recited in claims 8 and 13. App. Br. 2–4; Reply Br. 1–3.

ANALYSIS

With respect to independent claim 1, and similarly claims 8 and 13, the Examiner finds Hachmann teaches a duplex section, shown in Figures 1–2, comprising (1) “a first retaining section arranged to retain a first portion of a medium” in the form of grippers 26, shown in Figure 2, (2) “a second retaining section arranged to retain a second portion of the medium” in the form of suction openings 29, such that the medium (3) “is held substantially flat” via suction openings 29 and (4) “is linearly stretched by the first and second retaining sections while being held substantially flat” in the form of application of a stretching force or tension in linear direction created by suction openings 29, shown in Figure 2. Ans. 2–3 (citing Hachmann 4:5–25, 4:48–67, 5:50–67, 6:1–21).

The Examiner acknowledges Hachmann does not expressly teach, but relies on Landa for teaching the limitation: “while being stretched the medium is returned to the processing section with the first and second faces

interchanged relative to the processing of the processing section” in order to support the conclusion of obviousness. Ans. 3–4 (citing Landa 15:34–67, 16:1–57, Figs. 5B, 5C, and 5E).

Appellants do not dispute the Examiner’s factual findings regarding Hachmann. Nor do Appellants challenge the Examiner’s rationale for combining Hachmann and Landa. Instead, Appellants dispute the Examiner’s findings regarding Landa. For example, Appellants argue claim 1 requires both functions: “the medium is to be held substantially flat and linearly stretched while being held substantially flat” but “Landa says nothing at all about stretching sheet 22.” App. Br. 3; Reply Br. 3. In particular, Appellants argue:

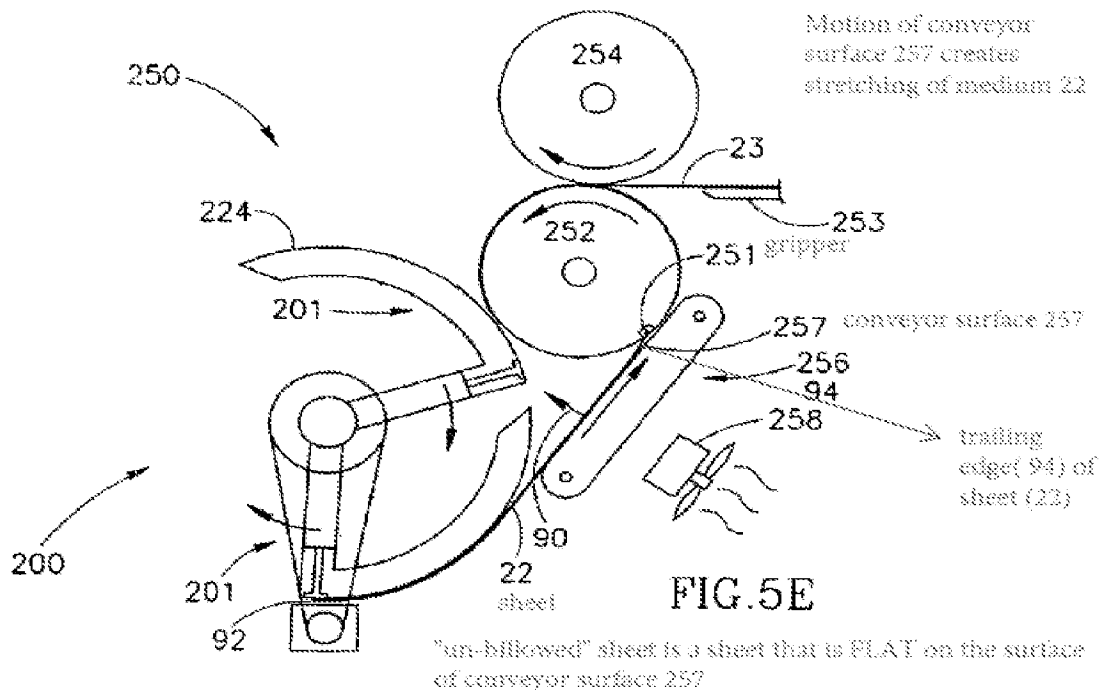
Landa teaches only that the airflow from fan 258 and the motion of conveyor surface 257 “substantially prevent billowing of sheet 22 on conveyor surface 257” at the time the sheet is returned to the imaging unit. . . . While it might be reasonable to assume an un-billowed sheet 22 is, by definition, held flat on surface 257 (there is no such teaching in Landa, however), it is decidedly not reasonable to assume sheet 22 is linearly stretched along surface 257. Sheet 22 in Landa does not have to be stretched to prevent billowing.

App. Br. 3–4 (emphasis added) (citing Landa 16:20–22, Fig. 5C). In other words, Appellants acknowledge Landa’s sheet 22 is returned to an imaging unit, but argue Landa’s sheet 22 is not “being stretched” while doing so.

We do not find Appellants’ arguments persuasive. Instead, we find the Examiner has provided a comprehensive response to Appellants’ arguments supported by a preponderance of evidence. Ans. 13–17. As such, we adopt the Examiner’s findings and explanations provided therein. *Id.* For additional emphasis, we note the functions recited in Appellants’

claim 1, i.e., “the medium is to be [1] held substantially flat and [2] linearly stretched while being held substantially flat” are disclosed by Hachmann, via suction openings 29 and application of a stretching force or tension in linear direction created by suction openings 29, shown in Figure 2. Ans. 3 (citing Hachmann 5:50–67, 6:1–21, Fig. 2). Landa is only relied upon to show Landa’s sheet 22 is returned to an imaging unit, “while being stretched.” Ans. 3–4 (citing Landa 15:34–67, 16:1–57, Figs. 5B, 5C, and 5E).

In particular, Landa teaches returning sheet 22 “while being stretched” shown in Figure 5E, as reproduced below with additional markings.



Landa’s Figure 5E shows duplex section 200 returning sheet 22 to an image unit or other processing section “while being stretched” via force created by motion of conveyor surface.

As recognized by the Examiner, “a stretching force must be applied to the sheet 22 in order to undo the billowing of the sheet.” Ans. 16.

In the Reply, Appellants newly argue Landa teaches away from stretching. In particular, Appellants argue:

Fig. 5C in Landa “shows sheet 22 ... at a time at which sheet 22 has just rolled completely off impression roller 252 and lies flat on conveyor surface 257’ and arm 201 rotates counterclockwise to move sheet 22 “in the direction of motion of conveyor surface 257.” Landa col. 16, lines 13-17 (emphasis added). The combination of an already flat sheet and motion forward along surface 257 suggests the sheet is not stretched linearly along surface 257.

Admittedly, if arm 201 is moving slower than conveyor surface 257 and arm 201 is gripping sheet 22 with sufficient force to hold it back, then sheet 22 might be stretched linearly along surface 257. But, as noted above, the fact that stretching is possible is not sufficient to support inherency.

Reply Br. 2–3. However, these new arguments are deemed waived. Appellants have not explained why, nor is it apparent that, these arguments were necessitated by a new point in the Examiner’s Answer or any other circumstance constituting “good cause” for its belated presentation. *See Ex parte Borden*, 93 USPQ2d 1473, 1473–74 (BPAI 2010) (“informative”) (absent a showing of good cause, the Board is not required to address argument in Reply Brief that could have been presented in the principal Appeal Brief). Nevertheless, we disagree with Appellants’ characterization of Landa for reasons discussed above.

Lastly, we note Appellants’ claim 1 does not distinguish over Hachmann alone. For example, as recognized by the Examiner, Hachmann’s duplex section, shown in Figures 1–2, is arranged such that the sheet 5 of paper 6 “is held substantially flat” via suction openings 29 and “is linearly stretched . . . while being held substantially flat” in the form of

application of a stretching force or tension in linear direction created by suction openings 29. However, once the sheet 5 of paper 6, shown in Hachmann's Figure 2, is printed on one side, the same sheet 5 of paper 6 is returned to an image unit or other processing section, "while being stretched" by suction openings 29 for printing on the other side. As such, we find Hachmann teaches all limitations of Appellants' claim 1. However, a disclosure such as Hachmann that anticipates under 35 U.S.C. § 102 can also render Appellants' claim 1 unpatentable under 35 U.S.C. § 103. *See In re Pearson*, 494 F.2d 1399, 1402 (CCPA 1974); *cf. Cohesive Tech v. Water Corp.*, 543 F.3d 1351, 1363 (Fed. Cir. 2008) ("novelty under 35 U.S.C. § 102 and nonobviousness under 35 U.S.C. § 103 are separate conditions of patentability").

For the reasons set forth above, Appellants have not demonstrated Examiner error. As such, we sustain the Examiner's obviousness rejection of independent claims 1, 8, and 13, and their respective dependent claims 2–7, 9–12, and 14–16, which Appellants do not argue separately. App. Br. 4.

CONCLUSION

On the record before us, we conclude Appellants have not demonstrated the Examiner erred in rejecting claims 1–16 under 35 U.S.C. § 103(a).

DECISION

As such, we AFFIRM the Examiner's final rejection of claims 1–16.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED